

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

ELGAN THOMAS BASTON,

Defendant and Appellant.

C043691

(Super. Ct. No.
CM016917)

Defendant Elgan Thomas Baston pleaded no contest to first degree automatic teller machine robbery (Pen. Code, §§ 211, 212.5, subd. (b))¹ and admitted that he personally used a firearm in the commission of the offense (§ 12022.53, subd. (b)). In exchange, four related counts and two prison term allegations were dismissed with a *Harvey* waiver. (*People v. Harvey* (1979) 25 Cal.3d 754.) Defendant was sentenced to state prison for 16 years and was awarded 372 days of custody credit and 55 days of conduct credit. The court imposed a restitution fine of \$250 (§ 1202.4, subd. (b)) and suspended an additional restitution fine in the same amount pending successful completion of parole

¹ All further statutory references are to the Penal Code.

(\$ 1202.45), imposed a \$30 theft fine (\$ 1202.5), and ordered defendant to make victim restitution.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Our review of the record discloses that the amended abstract of judgment filed June 11, 2003, fails to reflect the \$30 theft fine payable to the Chico Police Department. We shall direct the trial court to prepare a corrected abstract.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment and to forward a certified copy of the corrected abstract to the Department of Corrections.

We concur: RAYE, J.

BLEASE, Acting P.J.

ROBIE, J.